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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BANK OF AMERICA, N.A., SUCCESSOR
BY MERGER TO BANA HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP,

Plaintiff,

vs.

DESERT PINE VILLAS HOMEOWNERS
ASOCIATION; SFR INVESTMENTS POOL
1, LLC; and ALESSI & KOENIG, LLC,

Defendants.

SFR INVESTMENTS POOL 1, LLC,

Counter/Cross Claimant,

vs.

BANK OF AMERICA, N.A., SUCCESSOR
BY MERGER TO BANA HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP; and JANET
ROBITAILLE, an individual,

Counter/ Cross Defendants.

Case No. 2:16-cv-00725-JCM-NJK

**SFR INVESTMENTS POOL 1, LLC's
RESPONSE TO ORDER [ECF NO. 57]**

RESPONSE TO ORDER [ECF No. 57]

SFR Investments Pool 1, LLC (“SFR”) hereby responds to this Court’s November 14, 2016, Order. ECF No. 57. The Order sought “supplemental briefing discussing whether this recent development [i.e. the Ninth Circuit’s denial of rehearing in *Bourne Valley*] moots the pending motion to stay” *Id.* at 1:18-19. The pending Joint Motion to Stay requested “a stay of the briefing on the current motions and/or a stay of the litigation pending the resolution of all appeals in *Bourne Valley*.” ECF No. 42, 3:7-8. Also, the Declaration in Support of the Joint Motion stated that “it is in the interest of judicial economy, and client time and resources, to seek this stay pending a resolution of the *Bourne Valley* appellate process.” ECF No. 42-1, 2:14-15 (¶15). In sum, the Joint Motion requested a stay “pending the resolution of all appeals in *Bourne Valley*.” ECF No. 42, 3:8. If the relief that the Joint Motion seeks (i.e. a stay pending the “resolution of all appeals”) is still available, then the Joint Motion is not moot.

Here, the requested relief is still available because the Ninth Circuit’s denial of rehearing does not resolve “all appeals in *Bourne Valley*.” ECF No. 42, 3:7-8. To the contrary, the next step in the appellate process is a Motion to Stay the Mandate, followed by a Petition for a Writ of Certiorari with the United States Supreme Court. *See generally* FED. R. APP. P. 41(d)(2) (discussing motions to stay the mandate). On November 9, 2016, the Appellee in *Bourne Valley* filed a Motion to Stay the Mandate. *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, No. 15-15233 (9th Cir. 2016) (ECF No. 72-1). This Motion indicated that the Appellee in *Bourne Valley* will be filing a Petition for a Writ of Certiorari. *Id.* at 1:introductory¶ (Appellee “hereby moves to stay the issuance of the mandate in the above-captioned action, pending the filing and disposition of a petition for a writ of certiorari.”), 1:¶2, 2:¶3(a), 3:¶3(b) (“*Bourne Valley* will not be seeking

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1 certiorari merely for delay.”), 4:¶4, 5:¶4. As a result, the denial of rehearing in *Bourne Valley* does
2 not moot the Joint Motion to Stay [ECF No. 42] because “all appeals in *Bourne Valley*” have yet
3 to be resolved. The practical considerations that animate *Landis v. N. Am. Co.*, 299 U.S. 248 (1936)
4 are still in play, and inform this Court’s discretion over whether to stay “litigation pending the
5 resolution of all appeals in *Bourne Valley*.” ECF No. 42, 3:7-8. The Joint Motion is not moot.

6 DATED November 16, 2016.

7 **KIM GILBERT EBRON**

8 /s/ Jacqueline Gilbert
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November 2016, pursuant to FRCP 5, I served via the CM-ECF electronic filing system the foregoing **Response**, to the following parties:

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